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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 HYPHY MUSIC, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 JULIAN TAPIA SENA, an individual
16 doing business as DISTRIBUTION
17 DIGITAL MUSIC WORLD; ISIDORIA
18 GLORIA POSADAS ROMANO, an
19 individual; VERGE RECORDS
20 INTERNATIONAL, INC., a Tennessee
21 corporation doing business as ONErpm,

22 Defendants,
23
24

25
26 JULIAN TAPIA SENA, an individual
27 d/b/a DISTRIBUTION DIGITAL MUSIC
28 WORLD,

Counterclaimant and
Third-Party Plaintiff,

v.

HYPHY MUSIC, INC., a California
corporation,

Counter-Defendant,

and

Case No. 1:21-cv-00216-JLT-HBK

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO STRIKE
COUNTER-CLAIMANT'S
COUNTERCLAIMS AND THIRD-PARTY
COMPLAINT AND GRANTING IN PART
AND DENYING IN PART MOTION TO
DISMISS**

(Doc. 29)

JOSE MARTINEZ, and individual;
SALVADOR OLVERA RIOS, an
individual; and OLIMPO CARBAJAL, an
individual,

Third-Party Defendants.

I. INTRODUCTION

Before the Court is Counter-Defendant Hyphy and Third-Party Defendants Jose Martinez, Salvador Olvera Rios, and Olimpo Carbajal’s (collectively “Counter-Defendants”) motion to strike and motion to dismiss Counterclaimant Julia Tapia Sena’s counterclaims. For the reasons set forth below, the Court grants in part and denies in part the motion to strike and grants in part and denies in part the motion to dismiss.

II. BACKGROUND

Mr. Martinez is the owner of Hyphy, a record label that produces, distributes, sells, and licenses sound and audiovisual recordings in the United States. (Doc. 29 at 8.) Counter-Defendants assert that Mr. Olvera and his father formed and were co-owners of the Mexican musical group “Grupo Ensamble.” (*Id.*)¹ Mr. Olvera and Mr. Carbajal were members of the band and owners of certain rights in works created and recorded by the band. (*Id.*) In September 2017, Mr. Olvera and his father recorded the sound recording entitled *Tus Jefes No Me Quieren* (the “Work”). (*Id.*) In January 2019, Mr. Olvera allegedly signed an exclusive recording and music publishing agreement with Hyphy, both individually and on behalf of the band. (*Id.* at 8–9.) Under this agreement, Mr. Olvera and the band transferred all rights in any existing work, including the Work, to Hyphy. (*Id.* at 9.) In early 2019, Hyphy commissioned “Grupo Ensamble” to record the Work, then subsequently released this recording on various digital platforms in April 2019. (Doc. 17, ¶ 10.) Hyphy registered its ownership of the Work with the United States Copyright Office in 2020. (*Id.*, Ex. A.)

Mr. Tapia operates Distribution Digital Music World (“DDMW”), a record label and

¹ Mr. Tapia asserts that Ms. Isidora Gloria Posadas Romano originally formed “Grupo Ensamble” with her brother, trademarked the band in Mexico, and brought Mr. Olvera and his father into the band and allowed Mr. Olvera’s father to eventually take over musical direction while she maintained ownership. (Doc. 38 at 5.)

distributor. (Doc. 25, ¶ 13.) Between September 2019 and October 2020, Mr. Tapia allegedly acquired all administration, distribution, licensing, and royalty rights from Eduardo Medellin, Olimpo Carbajal, Salvador Olvera Rios, and Isidora Gloria Posadas Romano. (Docs. 25, ¶¶ 14–17; 61-1 at 2–5; 58-2 at 2–8; 58-3 at 2–5; 58-5 at 2–5.) Mr. Tapia allegedly obtained copyright registration of the Work in Mexico as a compilation with a different title that included the Work within it. (Doc. 29 at 9.) In April 2020, Mr. Olvera’s father passed away, and Ms. Posadas allegedly approached Mr. Olvera with a proposal that she and Mr. Tapia assist Mr. Olvera with continuing the band. (*Id.*)² Mr. Olvera declined Ms. Posadas’ proposal. (*Id.*)

In the summer of 2020, Ms. Posadas and Mr. Tapia created an alleged copycat musical group under the identical name of “Grupo Ensamble.” (*Id.*) By July 2020, Hyphy discovered that Mr. Tapia released an identical version of the Work on YouTube and Spotify through its distributor Verge Records International, Inc.—a Tennessee corporation doing business as ONErpm—via the identically named copycat group. (Docs. 17, ¶ 11; 29 at 10.)³ Following this discovery, Hyphy submitted Digital Millennium Copyright Act (“DMCA”) takedown notices for infringement to Spotify. (Doc. 17, ¶ 12.) In January 2021, Spotify allegedly responded by advising Hyphy that Mr. Tapia contested Hyphy’s ownership of the Work. (*Id.*) Mr. Tapia alleges that only Ms. Posadas and Mr. Medellin, not Mr. Olvera and Mr. Carbajal, had ownership of the sound recording rights to the Work. (Doc. 25, ¶ 21.) Therefore, with Mr. Tapia purportedly owning the licensing, Mr. Tapia contends that he validly released his version of the Work. (*Id.*) In February 2021, after these discussions with Spotify, Mr. Tapia released two new albums on Spotify containing the Work, as well as a single of the Work. (Doc. 17, ¶ 13.) Accordingly, Hyphy initiated this lawsuit against Mr. Tapia on February 19, 2021. (*See* Docs. 1; 25.) In July 2021, Mr. Martinez voiced his “opinions and frustrations” regarding the situation over Facebook. (Doc. 29 at 10.) In response to those statements, on November 15, 2021, Mr.

² Mr. Tapia alleges that following the passing of Mr. Olvera’s father, Mr. Olvera began making claims regarding his ownership of the band, prompting Ms. Posadas to register trademark of the band. (Doc. 38 at 6.) Mr. Posadas then served Mr. Olvera with a notice demanding that Mr. Olvera suspend or cease using the trademarks for the band, including on all digital platforms. (*Id.* at 6–7.)

³ Mr. Tapia alleges that it was in December 2020 that the Work was released on digital platforms. (Doc. 25, ¶ 18.)

1 Tapia filed his third-party complaint against Counter-Defendants. (*See* Doc. 25.)

2 Mr. Tapia alleges twelve causes of action against Counter-Defendants: (1) defamation
3 against Mr. Martinez and Hyphy; (2) intentional interference with contractual relations against
4 Mr. Carbajal and Mr. Olvera; (3) intentional interference with contractual relations against Mr.
5 Martinez and Hyphy; (4) breach of contract against Mr. Carbajal and Mr. Olvera; (5) fraudulent
6 misrepresentation against Mr. Martinez and Hyphy; (6) fraudulent misrepresentation against Mr.
7 Carbajal and Mr. Olvera; (7) declaratory relief: invalidation of copyright registration against
8 Hyphy; (8) intentional interference with prospective economic advantage against Mr. Martinez
9 and Hyphy; (9) negligent interference with prospective economic advantage against Mr. Martinez
10 and Hyphy; (10) conversion against Mr. Martinez and Hyphy; (11) theft by false pretenses against
11 Mr. Martinez and Hyphy; and (12) violation of California Business & Professions Code § 17200
12 against Counter-Defendants. (Doc. 25.) Counter-Defendants move to strike Mr. Tapia's
13 counterclaims under California Code of Civil Procedure § 425.16 and, in the alternative, dismiss
14 the claims under Federal Rule of Civil Procedure 12(b)(6). (Doc. 29.)

15 III. LEGAL STANDARD

16 A. Motion to Strike: California's Anti-SLAPP Statute

17 Under California law, "SLAPP" lawsuits refer to "strategic litigation against public
18 participation," and they attempt "to chill or punish a party's exercise of constitutional rights to
19 free speech and to petition the government for redress of grievances." *Rusheen v. Cohen*, 37 Cal.
20 4th 1048, 1055 (2006). California's anti-SLAPP statute, California Civil Procedure § 425.16,
21 creates an avenue for pre-trial dismissal of SLAPP lawsuits that "masquerade as ordinary
22 lawsuits" but aim to deter "expression through costly, time-consuming litigation." *Makaeff v.*
23 *Trump Univ.*, 715 F.3d 254, 261 (9th Cir. 2013) (internal quotations omitted); *Metabolife Int'l,*
24 *Inc. v. Wornick*, 264 F.3d 832, 839 (9th Cir. 2001); *Wilcox v. Superior Court*, 27 Cal. App. 4th
25 809, 819 (1994)).

26 Under the anti-SLAPP statute, a defendant may move to strike a claim or complaint when
27 the underlying conduct was an "act in furtherance of [the] right to petition or free speech."
28 *Wilcox*, 27 Cal. App. 4th at 818. In relevant part, § 425.16 provides:

A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

Cal. Civ. Proc. § 425.16(b).

To evaluate an anti-SLAPP motion, courts use a two-step analysis. *Daniels v. Robbins*, 182 Cal. App. 4th 204, 214 (2010). First, the defendant bears the initial burden to demonstrate the challenged causes of action arise from an act in furtherance of the defendant's right of petition or free speech, including:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Cal. Civ. Proc. § 425.16(e). The moving defendant must "identify[] all allegations of protected activity, and the claims for relief supported by them." *Baral v. Schnitt*, 1 Cal. 5th 376, 396 (2016).

If the defendant satisfies this burden, the analysis moves to step two. At step two, the burden shifts to the plaintiff to show a probability of prevailing on the challenged claim. *Metabolife Int'l*, 264 F.3d at 840; *Daniels*, 182 Cal. App. 4th at 214. In order to satisfy this burden, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." *Wilson v. Parker, Covert & Chidester*, 28 Cal. 4th 811, 821 (2002). Each challenged basis for liability must be examined individually to determine if the plaintiff has demonstrated a probability of prevailing, and if the plaintiff has failed to do so, then only that basis must be stricken from the plaintiff's pleading. *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002). When opposing an anti-SLAPP motion, the plaintiff must present admissible evidence supporting a prima facie showing of facts supporting a judgment in plaintiff's favor. *Roberts v.*

1 *Los Angeles County Bar Ass’n*, 105 Cal. App. 4th 604, 613 (2003). Thus, he may not rely on the
 2 pleadings and evidence that would not be admissible at trial. *Fashion 21 v. Coal. For Humane*
 3 *Immigrant Rights of Los Angeles*, 117 Cal. App. 4th 1138, 1148 (2004).

4 The Ninth Circuit held that courts must apply federal rules of procedure when determining
 5 the proper standard of review to assess the probability of prevailing. *Planned Parenthood Fed’n*
 6 *of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018). The standard of review
 7 depends on how the anti-SLAPP motion is styled. *Herring Networks, Inc. v. Maddow*, 8 F.4th
 8 1148, 1156 (9th Cir. 2021) (noting the “division of anti-SLAPP motions to strike into two
 9 categories: motions that challenge the legal sufficiency of complaints and motions that challenge
 10 the factual sufficiency of complaints”). When “an anti-SLAPP motion to strike challenges only
 11 the legal sufficiency of a claim,” the standard of review under Federal Rule of Civil Procedure
 12 12(b)(6) applies. *Planned Parenthood*, 890 F.3d at 834. “[O]n the other hand, when an
 13 anti-SLAPP motion to strike challenges the factual sufficiency of a claim, then the Federal Rule
 14 of Civil Procedure 56 standard will apply. But in such a case, discovery must be allowed, with
 15 opportunities to supplement evidence based on the factual challenges, before any decision is
 16 made by the court.” *Id.*

17 **B. Motion to Dismiss: Rule 12(b)(6)**

18 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss on
 19 the grounds that a complaint “fail[s] to state a claim upon which relief can be granted.” Fed. R.
 20 Civ. P. 12(b)(6). A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the
 21 complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In deciding a motion to dismiss,
 22 “all allegations of material fact are taken as true and construed in the light most favorable to the
 23 non-moving party.” *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir.
 24 2020). In assessing the sufficiency of a complaint, all well-pleaded factual allegations must be
 25 accepted as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). In evaluating a Rule 12(b)(6)
 26 motion, review is ordinarily limited to the contents of the complaint and material properly
 27 submitted within the complaint. *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754 (9th Cir.
 28 1994).

1 A claim is facially plausible “when the plaintiff pleads factual content that allows the
 2 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
 3 *Iqbal*, 556 U.S. at 678. A complaint that offers mere “labels and conclusions” or “a formulaic
 4 recitation of the elements of a cause of action will not do.” *Id.*; *see also Moss v. U.S. Secret Serv.*,
 5 572 F.3d 962, 969 (9th Cir. 2009). “Dismissal is proper only where there is no cognizable legal
 6 theory or an absence of sufficient facts alleged to support a cognizable legal theory.” *Navarro*,
 7 250 F.3d at 732.

8 If the court dismisses the complaint, it “should grant leave to amend even if no request to
 9 amend the pleading was made, unless it determines that the pleading could not possibly be cured
 10 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making
 11 this determination, the court should consider factors such as “the presence or absence of undue
 12 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments,
 13 undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v.*
 14 *Kayport Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

15 IV. DISCUSSION

16 “[T]he anti-SLAPP statute and Rules 12 and 56 ‘can exist side by side . . . each
 17 controlling its own intended sphere of coverage without conflict.’” *Makaeff v. Trump University*,
 18 *LLC*, 736 F.3d 1180, 1181 (9th Cir. 2013) (quoting *U.S. ex rel. Newsham v. Lockheed Missiles &*
 19 *Space Co.*, 190 F.3d 963, 972). “A motion to strike brought under [the anti-SLAPP statute] may
 20 be based on a deficit in a complaint, including legal deficiencies addressable on a motion to
 21 dismiss under [Rule 12(b)(6)], or a failure to support a stated claim with evidence, analogous to a
 22 [Rule 56] summary judgment motion.” *Robinson v. Alameda Cnty.*, 875 F. Supp. 2d 1029, 1047
 23 (N.D. Cal. 2012). Though the anti-SLAPP motion to strike and the Rule 12 motion to dismiss
 24 serve similar purposes, the outcome of one motion does not always direct the outcome of the
 25 other. *See Hilton v. Hallmark Cards*, 559 F.3d 894, 901–02 (9th Cir. 2010) (“[A] Rule 12(b)(6)
 26 motion to dismiss may succeed where an anti-SLAPP motion to strike would not.”).

27 Courts may grant a motion to dismiss while denying a motion to strike if the defendant’s
 28 underlying conduct is not an exercise of the rights of free speech. *See id.* Conversely, courts may

grant a motion to strike while denying a motion to dismiss if the plaintiff's complaint was well-pled, but the defendant's affidavits show that the plaintiff does not have a probability of prevailing. *See id.* However, if a defendant satisfies the first step of the anti-SLAPP analysis, then the plaintiff's failure to state a claim necessarily means that the anti-SLAPP motion should be granted. *See Vess v. Ciba-Geigy Corp., USA*, 317 F.3d 1097, 1110 (9th Cir. 2003) (affirming a 12(b)(6) dismissal and holding that, "[t]hus, [defendant] cannot demonstrate a probability that he will prevail on his claim"). If the court grants an anti-SLAPP motion to strike based on a defect in the complaint, the plaintiff should be permitted leave to amend his complaint. *Verizon Del., Inc. v. Covad Communs. Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) ("Granting a defendant's anti-SLAPP motion to strike a plaintiff's initial complaint without granting the plaintiff leave to amend would directly collide with Fed. R. Civ. P. 15(a)'s policy of favoring liberal amendment.") Thus, Mr. Tapia's motion to strike will be considered before the Court will address the motion to dismiss.

A. Motion to Strike Under California's Anti-SLAPP Statute

1. Conduct in Furtherance of Speech

Defendants bear the initial burden of proving that the anti-SLAPP statute applies to their conduct. The defendant must show the alleged activities that form the basis of the asserted claims are "protected," thereby bringing the claim within the scope of the anti-SLAPP statute. *Graham-Sult v. Clainos*, 756 F.3d 724, 735 (9th Cir. 2014) (citing *Wallace v. McCubbin*, 196 Cal. App. 4th 1169, 1183 (2011)). To be protected under the statute, "the acts underlying the plaintiff's cause of action [must] fall within one of the four categories spelled out in § 425.16(e)." *Collier v. Harris*, 240 Cal. App. 4th 41, 50–52 (2015). Counter-Defendants contend that the acts underlying Mr. Tapia's claims fall under the third and fourth categories laid out in § 425.16(e)—“(3) any written or oral statement or writing made in place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest.” (Doc. 29 at 13.) Specifically, Counter-Defendants allege that its filing of DMCA takedown notices and Mr. Martinez's social media statements

1 related to those takedown notices were in furtherance of Counter-Defendants’ right of petition or
 2 free speech. (*Id.*)

3 Generally, speech is protected under the First Amendment unless it falls within “a few
 4 limited areas, which are ‘of such slight social value as a step to truth that any benefit that may be
 5 derived from them is clearly outweighed by the social interest in order and morality.’” *R.A.V. v.*
 6 *City of St. Paul, Minn.*, 505 U.S. 337, 382–83 (1992) (quoting *Chaplinsky v. State of N.H.*, 315
 7 U.S. 568, 572 (1942)). “First Amendment standards must give the benefit of any doubt to
 8 protecting rather than stifling speech.” *Citizens United v. Fed. Election Com’n*, 558 U.S. 310,
 9 327 (2010). Courts have applied this broadly defined freedom of speech to hold that filing
 10 DMCA takedown notices and statements made regarding the takedown notices are
 11 constitutionally protected speech. *See, e.g., Lenz v. Universal Music Corp.*, No. C. 07-03783,
 12 2008 WL 962102, at *4 (N.D. Cal. 2008); *Complex Media, Inc. v. X17, Inc.*, No. CV 18-07588,
 13 2019 WL 2896117, at *3 (C.D. Cal. 2019). The Court agrees that Counter-Defendants’ takedown
 14 notices and statements related to the notices fall under the First Amendment’s speech protections.
 15 Thus, the Court must next determine whether Hyphy’s filing of DMCA takedown notices, and the
 16 statements made regarding the takedown notices, are “in connection with a public issue or an
 17 issue of public interest.” Cal. Code Civ. Proc. § 425.16(e)(4).

18 Though § 425.16 does not define “public interest,” courts considering the issue have
 19 construed the term broadly, in some cases finding that it “governs even private communications,
 20 so long as they concern a public issue.” *Wilbanks v. Wolk*, 121 Cal. App. 4th 883, 897 (2004);
 21 *see also Nyard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1039 (2008) (discussing the 1997
 22 amendments to the anti-SLAPP statute and the directive to construe the statute broadly). Further,
 23 courts have held that the definition of “public interest” under the anti-SLAPP statute includes
 24 “conduct that could directly affect a large number of people beyond the direct participants.”
 25 *Rivero v. Am. Fed’n of State, Cty., and Mun. Emp., AFL-CIO*, 105 Cal. App. 4th 913, 924 (2003).
 26 There should be a degree of closeness between the challenged statements and the asserted public
 27 interest; the assertion of a broad and amorphous public interest is not sufficient. *See Weinberg v.*
 28 *Feisel*, 110 Cal. App. 4th 1122, 1132–33 (2003). Protection of acts made in connection with an

1 issue of public interest “serves the anti-SLAPP statute’s purpose of encouraging *participation* in
 2 an ongoing controversy, debate or discussion.” *Du Charme v. Int’l Bhd. of Elec. Workers*, 110
 3 Cal. App. 4th 107, 118 (2003) (emphasis in original).

4 Mr. Tapia contends that “a private copyright dispute regarding who can claim royalties is
 5 not ‘a matter of public interest’” because “[d]isclosing private information to a large amount of
 6 people does not make the issue a matter of public interest.” (Doc. 38 at 15–16.) Indeed, courts
 7 have held that merely distributing private information does not satisfy the public interest
 8 requirement. *See Weinberg*, 110 Cal. App. 4th at 1133. However, the filing of DMCA takedown
 9 notices and public communications regarding those notices are not synonymous with merely
 10 disclosing private information. *See Complex Media, Inc.*, 2019 WL 2896117, at *4 (explaining
 11 that the filing and discussion of DMCA takedown notices directly impact a large community of
 12 people). In *Complex Media, Inc.*, the plaintiff had built a channel with 2.4 million subscribers
 13 and used the defendant’s content in various videos on that channel. *See id.* The defendant filed
 14 takedown notices to remove the videos using defendant’s content, and plaintiff made statements
 15 regarding these notices on the channel. *Id.* The *Complex Media, Inc.* court held that the
 16 defendant met its burden regarding the public interest requirement because “the DMCA notices,
 17 when granted, directly affected every subscribers’ access to the targeted videos on that Chennel
 18 [sic]. Conduct affecting the availability of videos in this large online community is a concern for
 19 each subscribing member of the public and thus, ‘an issue of public interest.’” *Id.* at *4–5.

20 Counter-Defendants’ filing of and statements regarding the DMCA takedown notices is
 21 analogous to those in *Complex Media, Inc.* Mr. Tapia alleges that he has suffered and will
 22 continue to suffer “substantial loss of revenues, profits, goodwill, and value in the Work” because
 23 of Counter-Defendants’ filing of and statements regarding the DMCA takedown notices. (Doc.
 24 25, ¶ 22.) Mr. Tapia contends that Counter-Defendants’ actions interfered with ONErpm’s
 25 contractual relationship with Spotify, Facebook, iTunes, YouTube, and other digital platforms,
 26 which led to “suspension and/or ceasing” use of the Work on all platforms. (Docs. 25, ¶¶ 44–46;
 27 38-1 at 4.) Counter-Defendants’ conduct affecting the availability of Mr. Tapia and ONErpm’s
 28 sound recordings on all digital platforms is a concern for each listening member of the public and

1 thus, is an issue of public interest. Accordingly, Counter-Defendants have met their burden of
 2 showing that the filing of and statements regarding the DMCA takedown notices are “an issue of
 3 public interest” pursuant to Cal. Code Civ. Proc. § 425.16(e). Thus, Counter-Defendants have
 4 made a prima facie showing that Mr. Tapia’s suit arises from an act in furtherance of
 5 Counter-Defendants’ rights of petition or speech, and the Court must move to the second prong.

6 2. Probability of Prevailing on Claims

7 The burden now shifts to Mr. Tapia, who must demonstrate that the complaint is
 8 “supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the
 9 evidence submitted by the plaintiff is credited.” *Wilson*, 28 Cal. 4th at 821. The determination is
 10 made on the basis of pleadings, as well as supporting and opposing affidavits that would be
 11 admissible at trial, stating the facts upon which the liability or defense is based. Cal. Civ. Proc.
 12 Code § 425.16(b)(2); *Fashion 21*, 117 Cal. App. 4th at 1148. Each of Mr. Tapia’s claims will be
 13 addressed in turn.

14 a. *Defamation*

15 Defamation “involves the intentional publication of a statement of fact that is false,
 16 unprivileged, and has a natural tendency to injure or which causes special damage.” *Sonoma*
 17 *Media Investments, LLC v. Superior Court*, 34 Cal. App. 5th 24, 37 (2019). Libel “is a type of
 18 defamation based on written or depicted communication.” *Balla v. Hall*, 59 Cal. App. 5th 652,
 19 571 (2021). In *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the Supreme Court
 20 explained that federal constitutional principles require persons who qualify as public officials or
 21 public figures to prove an additional element—that the false communication was made with
 22 actual malice. *Id.* at 270–80. Private plaintiffs, in contrast, need only show negligence. *Id.* A
 23 statement is defamatory when it tends “directly to injure [a person] in respect to his office,
 24 profession, trade or business, either by imputing to him general disqualification in those respects
 25 which the office . . . peculiarly requires, or by imputing something with reference to his
 26 office . . . that has a natural tendency to lessen its profits.” Cal. Civ. Code § 46(3). “Statements
 27 that contain such a charge directly, and without the need for explanatory matter, are libelous per
 28 se.” *McGarry v. University of San Diego*, 154 Cal. App. 4th 97, 112 (2007). A statement can

1 also be libelous per se if “a listener could understand the defamatory meaning without the
 2 necessity of knowing extrinsic explanatory matter.” *Id.* If the false statement is not libelous per
 3 se, a plaintiff must prove special damages. *Barnes-Hind, Inc. v. Superior Court*, 181 Cal. App.
 4 3d 377, 382 (1986).

5 i. Public Figure

6 “Whether an individual is a public figure is a question of law that must be assessed
 7 through a totality of the circumstances.” *Manzari v. Associated Newspapers Ltd.*, 830 F.3d 881,
 8 888 (9th Cir. 2016). There are two types of public figures: “Some occupy positions of such
 9 persuasive power and influence that they are deemed public figures for all purposes. More
 10 commonly, those classed as public figures have thrust themselves to the forefront of particular
 11 public controversies in order to influence the resolution of the issues involved. In either event,
 12 they invite attention and comment.” *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974). “All
 13 purpose” public figures are those in which “an individual may achieve such pervasive fame or
 14 notoriety that he becomes a public figure for all purposes and in all contexts.” *Id.* at 351. A
 15 “limited purpose” public figure, on the other hand, “voluntarily injects himself or is drawn into a
 16 particular public controversy and thereby becomes a public figure for a limited range of issues.”
 17 *Id.*

18 Because the public figure analysis is based on the totality of the circumstances, there is no
 19 bright-line level of notoriety that one must achieve to be deemed an all-purpose public figure.
 20 *See Manzari*, 830 F.3d at 888. In *Manzari*, the Ninth Circuit held that the plaintiff, an adult film
 21 actress, was a public figure because the plaintiff conducted television interviews related to her
 22 success, had 27,000 online subscribers, and 841,271,545 video downloads. *Id.* Similarly, in
 23 *Solano v. Playgirl, Inc.*, the Ninth Circuit held that the plaintiff, an actor best known for his
 24 three-year stint on “Baywatch,” was a public figure because of his notoriety on the show and a
 25 resulting magazine interview. 292 F.3d 1078, 1081 (9th Cir. 2002). On the other hand, in *Balla*,
 26 the court held that the plaintiff was a limited-purpose public figure because the plaintiff’s role as
 27 representative of a prospective developer seeking to obtain a public contract, was not broad
 28 enough to garner the public attention necessary to qualify as a public figure for all purposes. 59

1 Cal. App. 5th at 676.

2 Counter-Defendants allege that Mr. Tapia, as the lead vocalist for the band “Los Yes
3 Yes,” is an all-purpose public figure, but at the very least, a limited-purpose public figure because
4 Mr. Tapia “voluntarily injected himself into the public discourse over the Band and its dispute
5 with him when he formed his own copycat band to distribute” the Work. (Doc. 29 at 18.) Mr.
6 Tapia fails to address Counter-Defendants’ argument regarding the all-purpose figure
7 classification, but contends that he is not a limited-purpose public figure because he attempted to
8 handle the matter privately. (Doc. 38 at 22.) However, Mr. Tapia is a well-known artist in
9 Mexico, both through the “copycat” “Grupo Ensamble,” and the band “Los Yes Yes.” (Doc. 29-4
10 at 5.) Mr. Tapia’s version of the Work amassed 95 million streams on YouTube before being
11 removed and 86 million streams on Spotify between April 2020 and the filing of the lawsuit.
12 (Doc. 29-4 at 4–5.) Mr. Tapia’s band “Los Yes Yes” had 454,324 monthly listeners on Spotify as
13 of November 4, 2021. (Doc. 60-5 at 6.) These listener numbers, like the subscriber and
14 download numbers in *Manzari*, support finding that Mr. Tapia has amassed great public attention
15 in Mexico. Furthermore, Mr. Tapia conducted radio interviews in his role as lead vocalist for
16 “Los Yes Yes.” (Doc. 60-5 at 8.) As with the magazine interview in *Solano*, Mr. Tapia’s media
17 presence demonstrates his popularity and notoriety. Accordingly, Mr. Tapia is public figure for
18 purposes of the Court’s analysis.⁴

19 ii. Reasonable Probability of Prevailing on the Merits

20 To prevail, Mr. Tapia will eventually need to present clear and convincing evidence that
21 Counter-Defendants’ Facebook video and comments contained a defamatory implication, and that
22 Counter-Defendants acted with “actual malice” when they posted the video and comments. *See*
23 *Kaelin v. Globe Comm. Corp.*, 162 F.3d 1036, 1039 (9th Cir. 1998) (“A public figure in a
24 defamation case cannot recover unless he proves by clear and convincing evidence that the
25 defendant published the defamatory statement with actual malice, i.e., with knowledge that it was
26 false or with reckless disregard of whether it was false or not.”). However, at the anti-SLAPP
27

28 ⁴ Based upon the nature of the statements at issue and the nature of the controversy, the Court finds it unnecessary to determine whether Mr. Tapia is an all-purpose or a limited-purpose public figure.

1 stage, “[a] public figure who sues for defamation must establish a *probability* that he or she can
 2 produce such clear and convincing evidence.” *Overstock.com, Inc. v. Gradient Analytics, Inc.*,
 3 151 Cal. App. 4th 688, 700 (2007) (emphasis added); *see also Burrill v. Nair*, 217 Cal. App. 4th
 4 357, 390 (2013) (“[W]e must determine [at the anti-SLAPP stage] whether [the plaintiff] has
 5 made a sufficient prima facie showing of facts to sustain her burden of demonstrating a high
 6 probability that [the defendant] published the defamatory statements with knowledge of their
 7 falsity or while entertaining serious doubts as to their truth.”).

8 At this juncture in the proceedings, Mr. Tapia is required to prove only that the claim has
 9 minimal merit. *Overstock.com*, 151 Cal. App. 4th at 700. Counter-Defendants argue that these
 10 statements were “general statements of opinion about Mr. Tapia’s personal character.” (Doc. 40
 11 at 9.) Though Counter-Defendants’ statements did not affirmatively state that Mr. Tapia was
 12 infringing on Counter-Defendants’ copyright, it is not difficult to divine as such from the
 13 implications made in the statements. Counter-Defendants’ Facebook comments call Mr. Tapia a
 14 “rat,” “thief,” and “robber” who “took advantage and started committing piracy,” took a “copy”
 15 of the Work, and was “unfairly charging Ensamble’s royalties.” (Doc. 58-6 at 2–4.)⁵ Further,
 16 there are repeated references to court proceedings and documents “proving” that Mr. Tapia was
 17 stealing both the music and royalties. (*Id.*) Thus, Mr. Tapia has presented sufficient evidence to
 18 carry his burden of showing a reasonable probability of success on the merits regarding the
 19 defamatory nature of the statements.

20 The Court now turns to the malice prong of the defamation analysis for a public figure.
 21 The Supreme Court has provided a framework to assess whether a public figure may proceed with
 22 a defamation claim. In *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991), the Court
 23 explained that “actual malice” presents a question of fact: “The constitutional question we must
 24 consider here is whether . . . the evidence suffices to show that respondents acted with the
 25 requisite knowledge of falsity or reckless disregard as to truth or falsity.” *Id.* at 513. Where a
 26 statement “reasonably implies false and defamatory facts regarding public figures or officials,

27 ⁵ Mr. Tapia references the video posted on Facebook to support these allegations, (Doc. 38 at 22),
 28 however the video is in Spanish and no transcript or certified translation of the video was filed with the
 Court. Thus, the Court’s analysis is focused solely on the written comments.

1 those individuals must show that such statements were made with knowledge of their false
 2 implications or with reckless disregard of their truth.” *Milkovich v. Lorain Journal Co.*, 497 U.S.
 3 1, 30 (1990). “[R]eckless conduct is not measured by whether a reasonably prudent man would
 4 have published, or would have investigated before publishing. There must be sufficient evidence
 5 to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his
 6 publication.” *Time, Inc. v. Pape*, 401 U.S. 279, 291–92 (1971). This standard ensures that the
 7 individual making the statement is not held liable for unintentional misstatements or implications,
 8 which public figures later claim are defamatory. *Id.*

9 The statements at issue rest on the “reckless disregard” prong of actual malice.
 10 Recognizing that Mr. Tapia must only demonstrate “minimal merit” to withstand initial dismissal
 11 under the anti-SLAPP statute, the Court holds that Mr. Tapia has raised sufficient factual
 12 questions for a jury to conclude that Counter-Defendants acted with reckless disregard for the
 13 defamatory implication in the Facebook video and comments. Mr Tapia alleges that he attempted
 14 to handle the matter privately by emailing Counter-Defendants to settle the dispute, but that
 15 Counter-Defendants’ statements were intended to malign Mr. Tapia and bully him into
 16 submission. (Doc. 38 at 22–23.) The attempts to communicate by Mr. Tapia, paired with the
 17 ongoing litigation, demonstrates that a potential question of ownership and royalty rights existed.
 18 (*Id.*) Thus, doubts existed regarding the veracity of Mr. Tapia’s “thefts” and “piracy” of the
 19 Work, such that Mr. Tapia has met the threshold minimal merit requirement to avoid outright
 20 dismissal of the claim. Therefore, Counter-Defendants’ motion to strike the defamation claim is
 21 **DENIED.**

22 b. *Intentional Interference with Contractual Relations*

23 Under California law, a stranger to a contract may be liable in tort for intentionally
 24 interfering with the performance of the contract. *Pacific Gas & Electric Co. v. Bear Stearns &*
 25 *Co.*, 50 Cal. 3d 1118, 1126 (1990). To state a cause of action for intentional interference with
 26 contractual relations, a plaintiff must plead “(1) the existence of a valid contract between the
 27 plaintiff and a third party; (2) the defendant’s knowledge of that contract; (3) the defendant’s
 28 intentional acts designed to induce a breach or disruption of the contractual relationship; (4)

1 actual breach or disruption of the contractual relationship; and (5) resulting damage.” *Ixchel*
 2 *Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1141 (2020) (quoting *Reeves v. Hanlon*, 33 Cal.
 3 4th 1140, 1148 (2004)).

4 Mr. Tapia alleges intentional interference with contractual relations against Mr. Carbajal
 5 and Mr. Olvera, then in another count, against Hyphy and Mr. Martinez. (Doc. 25, ¶¶ 32–49.)
 6 Mr. Tapia alleges that Mr. Carbajal and Mr. Olvera “along with Hyphy, made an erroneous claim
 7 of copyright for the Work hindering Mr. Tapia from performing on his agreements.” (*Id.*, ¶ 37.)
 8 Against Hyphy and Mr. Martinez, Mr. Tapia alleges that a claim was made to Spotify that Mr.
 9 Tapia “was ‘pirating’ or infringing on the copyright of the Work, which led to Spotify removing
 10 Mr. Tapia’s catalog consisting of various sound recordings songs unrelated to the Work.” (*Id.*, ¶
 11 44.) Because both counts are predicated on Hyphy’s DMCA takedown notice, the Court will
 12 address both counts together. (*See* Doc. 38 at 17 (Mr. Tapia addressing that both counts are
 13 predicated on the action to takedown the music, which occurred through the filing of the
 14 takedown notice)). Counter-Defendants argue that Mr. Tapia cannot show a probability that it
 15 will prevail on the merits of its claim because Mr. Tapia’s state law claims for intentional
 16 interference with contractual relations are preempted by the DMCA. (Doc. 29 at 19.)

17 The Court agrees that Mr. Tapia’s state law claims are preempted by federal law.
 18 Preemption occurs “when compliance with both state and federal [laws] is a physical
 19 impossibility or when state law stands as an obstacle to the accomplishment and execution of the
 20 full purposes and objectives of Congress.” *Hollisborough County Fla. v. Automated Med. Labs.*
 21 *Inc.*, 471 U.S. 707, 713 (1985). The Ninth Circuit employs a two-part test to determine whether
 22 the Copyright Act preempts a particular state law claim—preemption occurs if: (1) the work at
 23 issue comes within the subject matter of copyright; and (2) the rights that the plaintiff asserts
 24 under state law are equivalent to those protected by the Act. *See Kodadek v. MTV Networks, Inc.*,
 25 152 F.3d 1209, 1212 (9th Cir. 1998). Courts in the Ninth Circuit have held that 17 U.S.C.
 26 § 512(f) of the DMCA preempts state law claims based on DMCA takedown notifications
 27 because the rights asserted under state law are wholly encompassed by the Copyright Act. *See*
 28 *e.g., Online Policy Group v. Diebold*, 337 F. Supp. 2d 1195 (N.D. Cal. 2004); *Lenz*, 2008 WL

1 962102, at *4; *Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, No. C 10-05696, 2011 WL
 2 2690437, at *4 (N.D. Cal. 2011); *Complex Media, Inc.*, 2019 WL 2896117, at *5. Applying the
 3 doctrine of conflict preemption, one court found that:

4 Even if a copyright holder does not intend to cause anything other than the removal
 5 of allegedly infringing material, compliance with the DMCA’s procedures
 6 nonetheless may result in disruption of a contractual relationship: by sending a letter,
 7 the copyright holder can effectuate the disruption of ISP service to clients. If
 8 adherence to the DMCA’s provisions simultaneously subjects the copyright holder
 9 to state tort law liability, there is an irreconcilable conflict between state and federal
 10 law In section 512(f), Congress provides an express remedy for misuse of the
 11 DMCA’s safe harbor provisions.

12 *Online Policy Group*, 337 F. Supp. 2d at 1205–06. Thus, Mr. Tapia’s intentional interference
 13 claim falls within the scope of the Copyright Act and is preempted. Accordingly, the Court
 14 **GRANTS** Counter-Defendant’s motion to strike Mr. Tapia’s state law claims and **STRIKES** Mr.
 15 Tapia’s claims for intentional interference with contractual relations.

16 c. *Breach of Contract*

17 To plead a breach of contract, a plaintiff must plead (1) the existence of a contract, (2)
 18 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) resulting
 19 damage to the plaintiff. *Reinhardt v. Gemini Motor Transport*, 879 F. Supp. 2d 1138, 1143 (E.D.
 20 Cal. 2012). Mr. Tapia alleges that Mr. Carbajal and Mr. Olvera breached their contracts with
 21 DDMW “when they conspired with Hyphy and Mr. Martinez to exploit the rights of the Work
 22 and improperly claim ownership to the sound recording copyrights of the Work.” (Doc. 25, ¶ 52.)
 23 Counter-Defendants argue that the breach of contract claim is preempted “because the referenced
 24 ‘agreements’ did not create rights in Mr. Tapia related to the Work that are qualitatively different
 25 from the rights Hyphy is claiming to possess in the Work via Copyright law.” (Doc. 29 at 20.)

26 i. Preemption

27 “[C]laims are not preempted by the federal copyright statute so long as they contain
 28 elements, such as the invasion of personal rights . . . that are different in kind from copyright
 infringement.” *Berkla v. Corel Corp.*, 66 F. Supp. 2d 1129, 1149 (E.D. Cal. 1999). “When
 determining whether a breach of contract claim is preempted by copyright, the Court must look to

the rights actually created by the contract, and then analyze whether any of those rights differ from the prohibition of unauthorized reproduction, performance, distribution, or display of work protected under copyright law.” *Rumble, Inc. v. Daily Mail & General Trust PLC*, 459 F. Supp. 3d 1294, 1299 (C.D. Cal. 2020). “Contract claims generally survive [copyright] preemption because they require proof of [] an extra element.” *Montz v. Pilgrim Films & TV, Inc.*, 649 F.3d 975, 980 (9th Cir. 2011). Contracts addressing rights to payment, rights to royalties, or any other independent covenant, are qualitatively different than copyright actions and are not preempted by federal copyright law. *See Kabehie v. Zoland*, 102 Cal. App. 4th 513, 528 (2002). However, if the contract does no more than promise not to infringe on copyrighted works, then claims stemming from breach are preempted. *Rumble, Inc.*, 459 F. Supp. 3d at 1299.

Counter-Defendants argue that the alleged contracts between Mr. Carbajal and Mr. Olvera with DDMW “did nothing more than purportedly give Mr. Tapia a claim for royalties that are granted by Copyright law, and therefore created no new, and qualitatively different right.” (Doc. 29 at 20.) Mr. Carbajal’s contract provided that DDMW would receive Mr. Carbajal’s royalties, withdraw commission and payment for services rendered, then distribute any remaining royalties to Mr. Carbajal. (Doc. 58-2 at 2–7.) Mr. Olvera’s contract assigned exclusive rights in the Work to DDMW and provided that DDMW would receive 70% of all revenue collected through all digital platforms and YouTube. (Doc. 58-3 at 2–4.) Both contracts addressed rights to royalties and other miscellaneous payments, which are qualitatively different elements than those underlying pure copyright actions under 17 U.S.C. § 512(f). *See Kabehie*, 102 Cal. App. 4th at 528; *Rumble, Inc.*, 459 F. Supp. 3d at 1299. Therefore, the breach of contract claim is not preempted by the Copyright Act.

ii. Reasonable Probability of Prevailing on the Merits

To demonstrate a probability of prevailing on the merits, Mr. Tapia must demonstrate that the complaint is “supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” *Wilson*, 28 Cal. 4th at 821. In addition to the contracts themselves, Mr. Tapia submitted various text messages between Mr. Tapia and both Mr. Carbajal and Mr. Olvera referencing the relationship between the parties and

the royalty arrangements. (Docs. 59-10 at 2–9; 59-11 at 2–3; 59-12 at 2–10; 59-13 at 2–6.) Though Counter-Defendants allege that the contracts are forgeries, the Court must accept as true all evidence favorable to Mr. Tapia and assess Counter-Defendants’ evidence only to determine if it defeats Mr. Tapia’s submission as a matter of law. *See Overstock.com, Inc.*, 151 Cal. App. 4th at 699–700. Because Counter-Defendants do not provide evidence defeating the validity of the contracts, Mr. Tapia has demonstrated facts sufficient to show the existence of the contracts. Furthermore, Mr. Tapia has shown that Mr. Carbajal and Mr. Olvera published the Work with Hyphy, which would constitute a breach of Mr. Carbajal and Mr. Olvera’s contracts, resulting in damage to Mr. Tapia. (Doc. 25, ¶¶ 50–55.) Therefore, Mr. Tapia has demonstrated a reasonable probability of prevailing on the merits and Counter-Defendants’ motion to strike the breach of contract claim is **DENIED**.

d. *Fraudulent Misrepresentation*

To state a claim for fraudulent misrepresentation, a plaintiff must plead:“(1) the defendant represented to the plaintiff that an important fact was true; (2) that representation was false; (3) the defendant knew that the representation was false when the defendant made it, or the defendant made the representation recklessly and without regard for its truth; (4) the defendant intended that the plaintiff rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was harmed; and (7) the plaintiff’s reliance on the defendant’s representation was a substantial factor in causing that harm to the plaintiff.” *Broge v. ALN Int’l, Inc.*, No. 17-cv-07131-BLF, 2018 WL 2197524, at *4 (N.D. Cal. 2018) (quoting *Graham v. Bank of Am., N.A.*, 226 Cal. App. 4th 594, 605–06 (2014)). Because a claim for fraudulent misrepresentation is subject to the higher pleading standard under Rule 9(b), a plaintiff must plead details regarding the “who, what, when, where, and how” of the alleged misconduct. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Mr. Tapia alleges two counts of fraudulent misrepresentation—one against Hyphy and Mr. Martinez, and one against Mr. Carbajal and Mr. Olvera. Because the factual allegations differ under each count, the Court will address each in turn.

///

i. Count One: Hyphy and Mr. Martinez

Mr. Tapia alleges that Hyphy and Mr. Martinez fraudulently misrepresented to Spotify that Mr. Tapia infringed on their copyright of the Work, in addition to other works by “Grupo Ensamble” and Mr. Tapia’s other band “Los Yes Yes.” (Doc. 25, ¶¶ 56–61.) Hyphy and Mr. Martinez contend that Mr. Tapia has no reasonable possibility of prevailing on this claim, because the purported fraudulent misrepresentation was made to Spotify, not Mr. Tapia himself. (Doc. 29 at 21.) The Court agrees. Even accepting as true that Hyphy made representations to Spotify regarding music that Hyphy knew it had no rights in, these representations were not made to Mr. Tapia as is required under California’s fraudulent misrepresentation cause of action. *See Broge*, 2018 WL 2197524, at *4 (explaining that the representation must be made to the plaintiff). (*See* Doc. 38 at 24.) Accordingly, the Court **GRANTS** Counter-Defendant’s motion to strike Mr. Tapia’s fraudulent misrepresentation claim against Hyphy and Mr. Martinez and **STRIKES** Mr. Tapia’s Mr. Tapia’s fraudulent misrepresentation claim against Hyphy and Mr. Martinez. Because Mr. Tapia may be able to remedy this defect, the motion to strike this claim against Hyphy and Mr. Martinez is granted with leave to amend.

ii. Count Two: Mr. Carbajal and Mr. Olvera

Mr. Tapia alleges that Mr. Carbajal and Mr. Olvera represented to Mr. Tapia, Hyphy, and Mr. Martinez that “they individually had ownership related to the Work.” (Doc. 25, ¶ 63.) Mr. Tapia avers that “at no time did Counter-Defendants Olvera and Carbajal have valid authorization or permission to license or exploit the rights of the Work.” (*Id.*, ¶ 64.) Mr. Olvera and Mr. Carbajal contend that Mr. Tapia’s cannot establish a probability of prevailing on this claim “because it is vague as to what specific misrepresentations Olvera and Carbajal allegedly made, and is silent on when, where and how such statements were allegedly made.” (Doc. 29 at 21.) The Court disagrees. Mr. Tapia has provided a sufficient prima facie showing of facts to sustain favorable judgment pertaining to the fraudulent misrepresentation claim. *See Wilson*, 28 Cal. 4th at 821. Mr. Carbajal and Mr. Olvera’s contracts with Mr. Tapia indicate that Mr. Carbajal and Mr. Olvera had ownership rights in the Work that could be transferred to Mr. Tapia. (Docs. 58-2 at 2–7; 58-3 at 2–4.) Furthermore, the text messages indicate that the contracts with Mr. Tapia

were for the purpose of maximizing the financial potential of the Work. (Docs. 59-10 at 2–9; 59-11 at 2–3; 59-12 at 2–10; 59-13 at 2–6.) However, Mr. Tapia provided documentation that Ms. Posadas was “the true owner of the principal version of the sound recording for the Work,” (*see* Doc. 59-6 at 2–4), demonstrating that Mr. Carbajal and Mr. Olvera fraudulently misrepresented their ownership rights. (Doc. 25, ¶ 64.) Thus, Mr. Tapia has established a probability of prevailing on the fraudulent misrepresentation claim against Mr. Carbajal and Mr. Olvera. Accordingly, Counter-Defendants’ motion to strike the fraudulent misrepresentation claim against Mr. Carbajal and Mr. Olvera is **DENIED**.

e. *Invalidation of Copyright Registration*

Before addressing the declaratory judgment of the invalidation of the copyright registration, the Court must first consider whether it has jurisdiction to address the claim. *See Rhoades v. Avon Pros., Inc.*, 504 F.3d 1151, 1157 (9th Cir. 2007) (“When presented with a claim for a declaratory judgment, . . . federal courts must take care to ensure the presence of an actual case or controversy, such that the judgment does not become an unconstitutional advisory opinion.”). The Declaratory Judgment Act permits a court to “declare the rights and other legal relations” of parties to “a case of actual controversy.” 28 U.S.C. § 2201(a). “The ‘actual controversy’ requirement of the Act is the same as the ‘case or controversy’ requirement of Article III of the United States Constitution.” *Societe de Conditionnement en Aluminun v. Hunter Eng’g Co.*, 655 F.2d 938, 942 (9th Cir. 1981). The court “must first inquire whether there is an actual case or controversy within its jurisdiction.” *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). “Second, if the court finds that an actual case or controversy exists, the court must decide whether to exercise its jurisdiction.” *Id.*

To present a justiciable case or controversy, a plaintiff must allege facts that, “under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, or sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Shell Gulf of Mex. Inc. v. Ctr. for Biological Diversity, Inc.*, 771 F.3d 632, 635 (9th Cir. 2014). For a declaratory judgment claim involving the validity or infringement of a copyright, an actual controversy exists if the defendants’ actions have caused the plaintiff to

1 harbor “a real and reasonable apprehension that [it] will be subject to liability if [it] continues”
 2 the allegedly infringing conduct. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 862 F.2d
 3 1542, 1555–56 (9th Cir. 1989).

4 In July 2020, Counter-Defendants sent Spotify a DMCA takedown notice, accusing Mr.
 5 Tapia of copyright infringement. (Doc. 17, ¶ 12.) Mr. Tapia was notified in February 2021 by
 6 Spotify that Counter-Defendants had issued a takedown notice, then immediately contacted
 7 Counter-Defendants to explain why Mr. Tapia believed he had ownership of the Work. (Docs. 38
 8 at 9; 38-14 at 2; 59-15 at 2–4.) The notification from Spotify indicated that the content from
 9 “Grupo Ensamble” and “Los Yes Yes” “infringes on intellectual property rights” and that the
 10 “content has been taken down.” (Doc. 38-14 at 2.) The Court concludes that this removal of the
 11 content and notification that Mr. Tapia was infringing on Hyphy’s copyright sufficiently alleges
 12 the requisite “real and reasonable apprehension,” and thus an actual controversy, as to
 13 Counter-Defendants. *See Digi Fama LLC v. SnapNHD, LLC*, No. CV 20-11792-RSWL-JEMx,
 14 2021 WL 8773299, at *5 (C.D. Cal. Sept. 3, 2021) (holding that a notification that the plaintiff
 15 was infringing on a copyright is sufficient to establish an actual controversy).

16 Having determined that an actual controversy exists between Mr. Tapia and
 17 Counter-Defendants, the Court must next determine whether maintaining jurisdiction is
 18 appropriate. *Principal Life Ins. Co.*, 394 F.3d at 669. In making this determination, the Court
 19 must consider a variety of factors, including:

20 whether retaining jurisdiction would: (1) involve the needless determination of
 21 state law issues; (2) encourage the filing of declaratory actions as a means of
 22 forum shopping; (3) risk duplicative litigation; (4) resolve all aspects of the
 23 controversy in a single proceeding; (5) serve a useful purpose in clarifying the
 legal relations at issue; (6) permit one party to obtain an unjust *res judicata*
 advantage; (7) risk entangling federal and state court systems; or (8) jeopardize the
 convenience of the parties.

24 *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1107 (9th Cir. 2011). At a minimum, factors one,
 25 two, three, five, and seven weigh in favor of retaining jurisdiction. The Court determines that the
 26 exercise of jurisdiction over the declaratory relief claim against Counter-Defendants is
 27 appropriate.

28 Counter-Defendants argue that the invalidation of the copyright registration is preempted

1 because the action “seeks declaratory relief on the basis of breached contractual rights that Mr.
 2 Tapia claims to possess.” (Doc. 29 at 22.) Because the Court has previously established that the
 3 breach of contract claim is not preempted, the declaratory relief similarly cannot be preempted.
 4 Counter-Defendants also argue that if the claim is not preempted, Mr. Tapia cannot establish a
 5 probability of prevailing on his claim because he has no rights in the Work. As discussed in the
 6 breach of contract and fraudulent misrepresentation discussions above, Mr. Tapia has established
 7 a probability of prevailing regarding his rights in the Work through his contracts with Mr. Olvera
 8 and Mr. Carbajal and the communications between the parties. (See Docs. 58-2 at 2–7; 58-3 at
 9 2–4; 59-10 at 2–9; 59-11 at 2–3; 59-12 at 2–10; 59-13 at 2–6.) Therefore, Mr. Tapia has similarly
 10 established a probability of prevailing on the invalidation of the copyright registration.
 11 Accordingly, Counter-Defendants’ motion to strike the declaratory relief claim is **DENIED**.

12 f. *Intentional Interference with Prospective Economic Advantage*

13 Under California law, to state a cause of action for intentional interference with
 14 prospective economic advantage, a plaintiff must plead “(1) an economic relationship between the
 15 plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2)
 16 the defendant’s knowledge of the relationship; (3) intentional acts on the part of the defendant
 17 designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic
 18 harm to the plaintiff proximately caused by the acts of the defendant.” *Korea Supply Co. v.*
 19 *Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1153 (2003). The California Supreme Court noted that
 20 “while intentionally interfering with an existing contract is a wrong in and of itself, intentionally
 21 interfering with a plaintiff’s prospective economic advantage is not. Therefore, to establish a
 22 claim for interference with prospective economic advantage, a plaintiff must plead that the
 23 defendant engaged in an independently wrongful act.” *Id.* at 1158. Furthermore, “an act is
 24 independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional,
 25 statutory, regulatory, common law, or other determinable legal standard.” *Id.* at 1159.

26 Mr. Tapia alleges that Mr. Martinez and Hyphy intentionally interfered with his
 27 prospective economic advantage by submitting an overbroad claim of copyright infringement for
 28 sound recordings. (Doc. 25, ¶ 81.) Mr. Tapia avers that Mr. Martinez and Hyphy intentionally

acted to harm Mr. Tapia through the removal of music other than the Work, and from a band other than “Grupo Ensamble.” (*Id.*, ¶¶ 79–84.) Furthermore, Mr. Tapia alleges that Mr. Martinez and Hyphy’s actions “led Spotify to issue Mr. Tapia an unjustified ‘strike’ on his Spotify profile.” (*Id.*, ¶ 82.) Mr. Martinez and Hyphy contend that even though this claim contains an intent element, this claim is still preempted by the Copyright Act. (Doc. 29 at 22.)

Though a claim for intentional interference with prospective economic advantage requires a showing of knowledge or intent on the part of the defendant that is not present in the federal copyright law, that is not enough to preclude preemption. *See Media.net Advertising FZ-LLC v. NetSeer, Inc.*, 156 F. Supp. 3d 1052, 1072 (N.D. Cal. 2016) (holding that when the intentional interference claim is predicated on the use of copyrighted work, the claim is preempted). The intent element is not “qualitatively different” than the elements of a copyright claim, and as such, “these additional requirements do not bring such a claim outside the scope of Copyright Act preemption.” *Wilder v. CBS Corp.*, No. 2:12-CV-8961-SVW-RZ, 2016 WL 693070, at *8 (C.D. Cal. Feb. 13, 2016); *see also Crafty Productions, Inc. v. Michaels Companies, Inc.*, 389 F. Supp. 3d 876, 886 (S.D. Cal. 2019) (explaining that the intent element alone does not foreclose preemption). “[F]ederal copyright laws already protect the exclusive right of distribution.” *Aagard v. Palomar Builders, Inc.*, 344 F. Supp. 2d 1211, 1219 (E.D. Cal. 2004). “[W]hether this claim is preempted ultimately turns on whether the gravamen of Plaintiff’s claim is an alleged violation of Plaintiff’s exclusive rights under the Copyright Act.” *220 Laboratories, Inc. v. Babaii*, No. CV 08-6125 PSG, 2008 WL 5158863, at *8 (C.D. Cal. Dec. 8, 2008).

Mr. Tapia’s intentional interference with prospective economic advantage claim against Mr. Martinez and Hyphy is wholly predicated on what Mr. Tapia alleges is an “overbroad claim of copyright infringement.” (Doc. 25, ¶ 81.) Though Mr. Tapia contends that Mr. Martinez and Hyphy’s “actions to takedown music that does not clearly belong to them” constitutes behavior outside the scope of the Copyright Act, (Doc. 38 at 19), Mr. Tapia presents an inexact interpretation of Ninth Circuit authority. Because the gravamen of Mr. Tapia’s intentional interference with prospective economic advantage claim is a violation of Mr. Tapia’s alleged copyrights, the Copyright Act is the exclusive avenue to pursue protection. *See Media.net*

1 *Advertising FZ-LLC*, 156 F. Supp. 3d at 1072. Therefore, Mr. Tapia’s intentional interference
 2 with prospective economic advantage claim is preempted by the Copyright Act. Accordingly, the
 3 Court **GRANTS** Counter-Defendant’s motion to strike and **STRIKES** Mr. Tapia’s intentional
 4 interference with prospective economic advantage claim against Mr. Martinez and Hyphy.

5 g. *Negligent Interference with Prospective Economic Advantage*

6 Under California law, a claim for “negligent interference with prospective economic
 7 advantage is established where a plaintiff demonstrates that (1) an economic relationship existed
 8 between the plaintiff and a third party which contained a reasonably probable future economic
 9 benefit or advantage to plaintiff; (2) the defendant knew of the existence of the relationship and
 10 was aware or should have been aware that if it did not act with due care its actions would interfere
 11 with this relationship and cause plaintiff to lose in whole or in part the probable future economic
 12 benefit or advantage of the relationship; (3) the defendant was negligent; and (4) such negligence
 13 caused damage to plaintiff in that the relationship was actually interfered with or disrupted and
 14 plaintiff lost in whole or in part the economic benefits or advantage reasonable expected.” *R*
 15 *Power Biofuels, LLC v. Chemex, LLC*, No. 16-CV-00716-LHK, 2016 WL 6663002, at *14 (N.D.
 16 Cal. Nov. 11, 2016).

17 Mr. Tapia alleges that Mr. Martinez and Hyphy had knowledge of Mr. Tapia’s existing
 18 relationship with Spotify and knew or should have known that submitting an overbroad claim of
 19 copyright infringement would interfere with Mr. Tapia’s prospective economic advantage. (Doc.
 20 25, ¶¶ 85–88.) Mr. Tapia alleges that because of Mr. Martinez and Hyphy’s negligence, Mr.
 21 Tapia received “an unjustified ‘strike’ on his Spotify profile” and Spotify removed Mr. Tapia’s
 22 work under the “Grupo Ensamble” and “Los Yes Yes” band pages. (*Id.*) Mr. Martinez and
 23 Hyphy contend that any alleged interference with Mr. Tapia’s copyrights is preempted by the
 24 Copyright Act, and thus the state law claim of negligent interference with prospective economic
 25 advantage is preempted. (Doc. 29 at 23.)

26 The only difference between an intentional interference claim and a negligent interference
 27 with prospective economic advantage claim relates to the defendant’s intent; rather than
 28 intentionally disrupting the relationship, the defendant must act negligently to disrupt the

relationship. *See Crown Imports, LLC v. Superior Court*, 223 Cal. App. 4th 1395, 1404 n.10 (2014). Thus, the negligence element, instead of the intent element, does not remove this claim from the Copyright Act’s sphere unless the gravamen of the allegations is outside the scope of federal law. *See Kabehie*, 102 Cal. App. 4th at 530 (holding that when the copyright allegations permeate both the intentional interference and negligent interference with prospective economic advantage claims, both are preempted). Because Mr. Tapia reasserts that Mr. Martinez and Hyphy were negligent due to the overbroad claims of copyright infringement, Mr. Tapia’s negligent interference claim is preempted by the Copyright Act. Therefore, the Court **GRANTS** Counter-Defendant’s motion to strike and **STRIKES** Mr. Tapia’s negligent interference with prospective economic advantage claim against Mr. Martinez and Hyphy.

h. *Conversion*

To plead conversion, a plaintiff must demonstrate “(1) plaintiffs’ ownership or right to possession of the property at the time of the conversion; (2) defendants’ conversion by a wrongful act or disposition of plaintiffs’ property rights; and (3) damages.” *Tyrone Pac. Intern., Inc. v. MV Eurychili*, 658 F.2d 664, 666 (9th Cir. 1981). “Because conversion is a strict liability claim, a defendant’s ‘good faith, lack of knowledge, motive, or intent are not relevant’ in establishing a claim for conversion.” *Joe Hand Promotions, Inc. v. Roseville Lodge No. 1293*, 161 F. Supp. 3d 910, 916 (E.D. Cal. 2016). Mr. Tapia alleges that Hyphy and Mr. Martinez wrongfully collected and profited from music that did not belong to them and sought damages for the royalty’s wrongfully obtained by Hyphy and Mr. Martinez. (Doc. 25, ¶¶ 89–94.) Hyphy and Mr. Martinez contend that Mr. Tapia’s conversion claim is preempted by the Copyright Act. (Doc. 29 at 23.)

“Generally, when the tort of conversion relates to interference with tangible rather than intangible property, it should be held immune from preemption.” *Weller Const., Inc. v. Memorial Healthcare Services*, No. SACV 14-01115-CJC, 2014 WL 5089422, at *3 (C.D. Cal. Oct. 8, 2014). “Whereas an action for conversion will lie only for wrongful possession of the tangible embodiment of a work, ‘a copyright action must be brought for the wrongful use of the intangible artistic property contained therein.’” *Id.* (quoting *AmerUS Life Ins. Co. v. Bank of America*, 143 Cal. App. 4th 631, 642 (2006)). “Furthermore, when a plaintiff’s claim only seeks damages from

1 a defendant’s reproduction of a work ‘and not the actual return of a physical piece of
2 property—the claim is preempted.’” *Id.* (quoting *Firoozye v. Earthlink Network*, 153 F. Supp. 2d
3 1115, 1130 (N.D. Cal. 2001)).

4 Mr. Tapia does not seek the return of a physical piece of property, but the royalties
5 accrued on what Mr. Tapia claims was an infringed copyright. (Doc. 25, ¶¶ 89–94.) Such a
6 claim only seeks damages for the infringement, not return of wrongfully possessed tangible work.
7 *See Weller Const. Inc.*, 2014 WL 5089422, at *3. Damages for infringement are exclusively
8 governed by the Copyright Act. *See Aagard*, 344 F. Supp. 2d at 1219. Thus, Mr. Tapia’s state
9 law conversion claim is preempted by federal copyright laws. Therefore, the Court **GRANTS**
10 Counter-Defendant’s motion to strike and **STRIKES** Mr. Tapia’s state law conversion claim
11 against Mr. Martinez and Hyphy.

12 i. *Theft by False Pretenses*

13 Under California law, theft by false pretenses requires three elements “(1) property was
14 stolen or obtained in a manner constituting theft, (2) the defendant knew the property was so
15 stolen or obtained, and (3) the defendant received or had possession of the stolen property.”
16 *Switzer v. Wood*, 35 Cal. App. 5th 116, 126 (2019). Mr. Tapia alleges that Hyphy and Mr.
17 Martinez wrongfully collected and profited from copyright infringement, which constitutes theft
18 by false pretenses. (Doc. 25, ¶¶ 95–100.) Hyphy and Mr. Martinez argue that Mr. Tapia’s theft
19 by false pretenses claim is essentially identical to the conversion claim and should also be
20 preempted by the Copyright Act. (Doc. 29 at 24.)

21 State law claims are preempted when the subject matter falls under the scope of copyright
22 protection and the right asserted under state law is equivalent to an exclusive right of the
23 Copyright Act. *See Kabehie*, 102. Cal. App. 4th at 520. State law claims seeking recovery of
24 money received on the basis of the copyright infringement are preempted because these causes of
25 action are not qualitatively different from a copyright infringement action. *See id.* at 530
26 (explaining that a cause of action intended to recover proceeds from unauthorized reproduction
27 and distribution of material is preempted by the Copyright Act). Because Mr. Tapia is attempting
28 to use the theft by false pretenses claim to recover royalties, and damages for copyright

1 infringement exclusively fall under the scope of the Copyright Act, this claim is preempted.
 2 Thus, the Court **GRANTS** Counter-Defendant's motion to strike and **STRIKES** Mr. Tapia's state
 3 law theft by false pretenses claim against Mr. Martinez and Hyphy.

4 j. *Violation of California Business & Professions Code § 17200*

5 The UCL prohibits any unlawful, unfair, or fraudulent business practice. Cal. Bus. &
 6 Prof. Code §17200. "By proscribing 'any unlawful' business practice, § 17200 borrows
 7 violations of other laws and treats them as unlawful practices that the unfair competition law
 8 makes independently actionable." *Cel-Tech. Comm., Inc. v. Los Angeles Cellular Tele. Co.*, 20
 9 Cal. 4th 163, 180 (1999). "Because the statute is written in the disjunctive, it is violated where a
 10 defendant's acts or practices violates any of the foregoing prongs." *Davis v. HSBC Bank Nev.*,
 11 N.A., 691 F.3d 1152, 1168 (9th Cir. 2012). Mr. Tapia alleges that he has been harmed by
 12 Counter-Defendants defamation, fraudulent misrepresentations, invalidly claimed '529
 13 Registration, intentional and negligent interference, conversion, and theft by false pretenses.
 14 (Doc. 25, ¶¶ 101–105.) Counter-Defendants argue that any violation under § 17200 based on a
 15 preempted claim is similarly preempted, and Mr. Tapia cannot demonstrate a probability to
 16 prevail on any remaining claims. (Doc. 29 at 24.)

17 A determination of whether the Copyright Act preempts a UCL claim "requires analysis
 18 of each theory of unfair competition to determine whether it contains the necessary qualitatively
 19 different extra element distinguishing it from copyright . . . protection." *Summit Mach. Tool Mfg.*
 20 *Corp. v. Victor CNC Sys., Inc.*, 7 F.3d 1434, 1440 (9th Cir. 1993). "To the extent that Plaintiff
 21 brings this [UCL] claim based on conduct involving subject matter covered by the Copyright Act,
 22 the claim is preempted if it implicates rights contained in that Act." *Sleep Sci. Partners v.*
 23 *Lieberman*, No. 09-04200 CW, 2010 WL 1881770, at *10 (N.D. Cal. May 10, 2010). If the
 24 plaintiff does not include any additional allegations or facts in the UCL claim that are not asserted
 25 in the prior claims, any portion of the UCL claim predicated on those preempted claims is
 26 similarly preempted. *See Young Money Entm't, LLC v. Digerati Holdings, LLC*, No.
 27 2:12-cv-07663-ODW, 2012 WL 5571209, at *9 (C.D. Cal. Nov. 15, 2012) (finding Copyright Act
 28 preempted UCL claim where plaintiff did not allege additional facts but merely incorporated facts

1 regarding copyright infringement).

2 Of Mr. Tapia's allegations underlying the UCL claim, only the defamation and fraudulent
3 misrepresentation claims are not preempted by the Copyright Act. All other claims underlying
4 the UCL claim are preempted. "Where, as here, 'the improper business act complained of is
5 based on copyright infringement, a UCL claim is 'properly dismissed because it is preempted.'"
6 *Epikhin v. Game Insight N. Am.*, No. 14-CV-04383-LHK, 2015 WL 2412357, at *5 (N.D. Cal.
7 May 20, 2015) (quoting *Sybersound Records, Inc. v. UAV Corp.*, 517 F.3d 1137, 1150 (9th Cir.
8 2008)). Thus, to the extent Mr. Tapia's UCL claim is based on the preempted claims, the Court
9 **GRANTS** Counter-Defendant's motion to strike and **STRIKES** Mr. Tapia's UCL claims
10 predicated on the preempted claims. Regarding the portions of the UCL claim predicated on the
11 defamation and fraudulent misrepresentation claims, the Court finds that Mr. Tapia has
12 demonstrated a probability of prevailing to withstand dismissal under the anti-SLAPP motion to
13 strike. Mr. Tapia sufficiently demonstrated that both claims are supported by a prima facie
14 showing of facts to sustain a favorable judgment, *see Wilson*, 28 Cal. 4th at 821, and re-alleged
15 and incorporated by reference the requisite facts for these claims in the UCL claim. (Doc. 25,
16 ¶ 101.) Thus, to the extent Mr. Tapia's UCL claim is based on the defamation and fraudulent
17 misrepresentation claims, the Court **DENIES** Counter-Defendant's motion to strike.

18 **B. Motion to Dismiss**

19 Following the Court's analysis and holdings regarding Counter-Defendant's motion to
20 strike, of the twelve causes of action pled by Mr. Tapia, seven claims are preempted by the
21 Copyright Act: both counts of intentional interference with contractual relations, intentional
22 interference with prospective economic advantage, negligent interference with prospective
23 economic advantage, conversion, theft by false pretenses, and the portions of the UCL predicated
24 on those preempted claims. Because these claims are preempted and amendment would be futile,
25 they are necessarily **DISMISSED** without leave to amend. *See Lamb v. Floor & Décor Outlets*
26 *of America, Inc.*, No. 13-cv-0390, 2014 WL 12570175, at *5 (S.D. Cal. Mar. 28, 2014)
27 (explaining that claims preempted by the Copyright Act must be dismissed without leave to
28 amend because amendment would be futile). As for the remaining causes of action, including the

portions of the UCL claim not preempted, Counter-Defendants offer no specific argument beyond reciting the legal standard for a motion to dismiss. It is the burden of the party bringing a motion to dismiss for failure to state a claim to demonstrate that the requirements of Rule 8(a)(2) have not been met. *See Bryant v. Apotex, Inc.*, No. 12-01377, 2013 WL 394705, at *5 (E.D. Cal. Jan. 30, 2013). Accordingly, the Court cannot address Counter-Defendants motion to dismiss at this time.

CONCLUSION

For the reasons set forth above:

1. Counter-Defendants' motion to strike is granted in part and denied in part as follows:
 - a. Counter-Defendants' motion to strike the first cause of action for defamation is **DENIED**.
 - b. Counter-Defendants' motion to strike the second and third causes of action for intentional interference with contractual relations are **GRANTED** without leave to amend.
 - c. Counter-Defendants' motion to strike the fourth cause of action for breach of contract is **DENIED**.
 - d. Counter-Defendants' motion to strike the fifth cause of action for fraudulent misrepresentation against Hyphy and Mr. Martinez is **GRANTED** with leave to amend.
 - e. Counter-Defendants' motion to strike the sixth cause of action for fraudulent misrepresentation against Mr. Carbajal and Mr. Olvera is **DENIED**.
 - f. Counter-Defendants' motion to strike the seventh cause of action for invalidation of copyright registration is **DENIED**.
 - g. Counter-Defendants' motion to strike the eighth cause of action for intentional interference with prospective economic advantage is **GRANTED** without leave to amend.
 - h. Counter-Defendants' motion to strike the ninth cause of action for negligent interference with prospective economic advantage is **GRANTED** without

1 leave to amend.

2 i. Counter-Defendants' motion to strike the tenth cause of action for conversion
3 is **GRANTED** without leave to amend.

4 j. Counter-Defendants' motion to strike the eleventh cause of action for theft by
5 false pretenses is **GRANTED** without leave to amend.

6 k. Counter-Defendants' motion to strike the twelve cause of action is **DENIED** as
7 based on the defamation and fraudulent misrepresentation claims and
8 **GRANTED** without leave to amend on all other grounds.

9 2. Counter-Defendants' motion to dismiss is granted in part and denied in part as
10 follows:

11 a. Counter-Defendants' motion to dismiss the first cause of action for defamation
12 is **DENIED**.

13 b. Counter-Defendants' motion to dismiss the second and third causes of action
14 for intentional interference with contractual relations are **GRANTED** without
15 leave to amend.

16 c. Counter-Defendants' motion to dismiss the fourth cause of action for breach of
17 contract is **DENIED**.

18 d. Counter-Defendants' motion to dismiss the fifth cause of action for fraudulent
19 misrepresentation against Hyphy and Mr. Martinez is **DENIED**.

20 e. Counter-Defendants' motion to dismiss the sixth cause of action for fraudulent
21 misrepresentation against Mr. Carbajal and Mr. Olvera is **DENIED**.

22 f. Counter-Defendants' motion to dismiss the seventh cause of action for
23 invalidation of copyright registration is **DENIED**.

24 g. Counter-Defendants' motion to dismiss the eighth cause of action for
25 intentional interference with prospective economic advantage is **GRANTED**
26 without leave to amend.

27 h. Counter-Defendants' motion to dismiss the ninth cause of action for negligent
28 interference with prospective economic advantage is **GRANTED** without

1 leave to amend.

2 i. Counter-Defendants' motion to dismiss the tenth cause of action for
3 conversion is **GRANTED** without leave to amend.

4 j. Counter-Defendants' motion to dismiss the eleventh cause of action for theft
5 by false pretenses is **GRANTED** without leave to amend.

6 k. Counter-Defendants' motion to dismiss the twelve cause of action is **DENIED**
7 as based on the defamation and fraudulent misrepresentation claims and
8 **GRANTED** without leave to amend on all other grounds.

9
10 IT IS SO ORDERED.

11 Dated: **March 18, 2025**


UNITED STATES DISTRICT JUDGE